



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

January 14, 1994

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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Re: In the Matter of Policies and Rules
Concerning Toll Fraud
CC Docket No. 93-292

JAN 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Secretary Caton:

Enclosed please find an original and four (4) copies of
the Comments of the Pennsylvania Public Utility Commission in the
above-captioned proceeding.

Sincerely,

Maureen A. Scott
Maureen A. Scott
Assistant Counsel

For the Pennsylvania Public
Utility Commission

MAS/ms
Enclosure

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JAN 14 1994

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Policies and Rules
Concerning Toll Fraud

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) CC Docket No. 93-292
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**COMMENTS OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

The Pennsylvania Public Utility Commission ("PaPUC") is the state agency responsible for regulating all public utilities, including telephone companies, within the Commonwealth of Pennsylvania. As such, it has a significant interest in the regulation of telecommunications services at both the interstate and intrastate levels. In pursuit of that interest, the PaPUC submits the following comments in accordance with the pleading cycle in this proceeding.

I. INTRODUCTION AND SUMMARY OF PAPUC'S POSITION

In its Notice of Proposed Rulemaking ("NPRM")¹, the Federal Communications Commission ("FCC" or "Commission") seeks comment on proposals to:

"(1) achieve closer coordination between the industry, consumers, vendors, law enforcement agencies, Congress, and the Commission to aid in the detection and prevention of toll fraud; (2) improve consumer education initiatives by the Commission, consumer groups, and the telecommunications industry; (3) determine that

¹In the Matter of Policies and Rules Concerning Toll Fraud, Notice of Proposed Rulemaking, CC Docket No. 93-292, Adopted: November 10, 1993; Released: December 2, 1993.

tariff liability provisions that fail to recognize an obligation by the carrier to warn customers of toll fraud risks of using carrier services are unreasonable; (4) establish a federal policy assigning liability for payphone fraud; (5) codify a requirement for written warnings for all telecommunications equipment registered under Part 68; and, (6) determine measures to prevent cellular and Line Information Database ("LIDB") fraud."²

In general, the PaPUC strongly supports many of the FCC's proposals which, for purposes of interstate services, will: 1) put more emphasis on prevention and education in combatting toll fraud, and, 2) attempt to more fairly apportion toll fraud liability which the industry currently estimates to be up to \$5 billion dollars.

The PaPUC agrees that existing practices permitting some parties to escape any responsibility for this growing problem through the use of "limited liability" provisions is unfair and may lead to harsh and inequitable results. Future practices should recognize the obligations of all parties to use any measures within their control to prevent toll fraud. The PaPUC also agrees that existing practices have lacked the necessary incentives to encourage an adequate resolution of this pervasive industry problem to date by all affected parties.

The FCC's proposals, together with state initiatives designed to combat intrastate toll fraud, will have a significant impact on containing this pervasive industry problem in the future.

With regard to the FCC's specific proposals, the PaPUC agrees that carriers should have a responsibility to warn customers of the potential risks and their potential financial liability in

²NPRM at 2.

the event of toll fraud. Carriers should also have a responsibility to offer customers any network functions within their control that would assist customers in identifying and containing toll fraud. Finally, carriers should be required to notify manufacturers and subscribers of any network changes which may affect the prevention or detection of toll fraud within a reasonable time before such changes occur. These obligations should be clearly set out in the carrier's tariff.

Manufacturers should also have an obligation to warn customers of the potential risks of toll fraud associated with their equipment. As part of this responsibility, manufacturers should be required to inform the customer of the availability or nonavailability of measures or devices designed to prevent toll fraud on its particular system. The PaPUC would further recommend that the FCC establish a task force whose primary purpose would be to examine and recommend standardized anti-theft devices or measures which should be incorporated into Part 68 in the future.

These same principles, i.e., recognition of the responsibility of all parties and apportionment of liability should be applied to other forms of toll fraud including payphone fraud and credit card fraud resulting from improper maintenance or use of Line Information Data Base ("LIDB") services.

The PaPUC also supports changes to current criminal statutes designed to encourage and facilitate the prosecution of persons who commit toll fraud.

In summary, the PaPUC believes that rules which recognize

the responsibilities of all parties and as a result more equitably apportion toll liability, will be the most effective method of preventing toll fraud in the future.

II. DISCUSSION

A. Apportionment of Liability for Toll Fraud

The PaPUC supports the adoption of rules which would more equitably apportion liability in cases of toll fraud. The PaPUC recognizes that such a system will require that the responsibilities of the various parties be clearly defined. As discussed below, current practices should be revised to require all parties to take those measures within their control to prevent and contain toll fraud.

B. PBX Fraud

1. Carriers' Responsibilities

The PaPUC agrees with the Commission's tentative conclusion that tariff liability provisions should recognize an obligation by the carrier to warn customers of the risks of using carrier services. Because of the large dollar amounts generally involved, the PaPUC agrees that carriers should have an affirmative duty to warn customers through billing inserts, annual notices and other information distribution methods of the potential risks of toll fraud. Carriers should also be required to warn customers of their potential financial liability if adequate precautions are not taken by the subscriber to prevent toll fraud.

While the PaPUC believes that semi-annual mailings would be most effective, at a minimum, carriers should be required to

inform their business subscribers at least once annually by way of a billing insert or separate notice of the potential risks and liabilities associated with toll fraud. The notice should be clearly marked "WARNING" in conspicuous letters to ensure that the customer's attention will be drawn to it and that the customer will read the notice. In addition to the appropriate warnings, the mailing should include a statement informing the subscriber that preventive measures and devices are available and should also give a toll-free telephone number which the customer can call for further information. The informational mailing should also inform the subscriber of any available educational materials such as programs sponsored by the carrier or others with instructions on how to obtain or enroll for this information. The mailing should further inform the subscriber that information specific to its system can also be obtained directly from the manufacturer. Finally, the mailing should briefly inform the customer that remedies are available if the subscriber has taken proper precautions and the subscriber believes that he or she has been aggrieved in any way when toll fraud does occur.

The NPRM also inquires whether a carrier's failure to offer services to limit customer exposure should be considered an unreasonable practice. The PaPUC believes that carriers, before being completely absolved from liability, should be obligated to utilize or offer any network functions available to them or within their control which could effectively detect or limit toll fraud. It should also be incumbent upon carriers to install and utilize

such network devices as are available to permit early toll fraud detection. Such services should, for example, include monitoring, screening, and other similar network functions that would assist carriers and customers in identifying any potential problems. A carrier's failure to offer the network functions available to or within the carrier's control to detect fraud should be considered in determining liability if toll fraud ensues which otherwise could have been prevented through the use of those network functions. Carriers should be compensated for the provision of such services on a cost plus return basis.

The PaPUC does not believe, however, that a carrier's failure to offer secondary or non-network devices should constitute an "unreasonable" practice for which liability should attach. However, the PaPUC believes that it would be unreasonable for carriers not offering such services to fail to inform the customer of the availability of such services, and if requested, a list of selected vendors or manufacturers offering such services.

Carriers should also have a responsibility to immediately notify a customer when toll fraud is suspected or identified so that the subscriber can immediately take the appropriate corrective action to limit its losses. A carrier should be required to notify a subscriber within 24 hours after the toll fraud is suspected or identified. Carriers should also be required to promptly investigate subscriber complaints of toll fraud as well as to promptly issue the appropriate credits when the customer is not at fault.

The PaPUC also believes that carriers should be required to notify manufacturers and business subscribers of network changes which could influence toll fraud detection or prevention. Carriers should be required to notify manufacturers and business subscribers in writing of any network changes well before the changes are instituted.

Finally, the PaPUC strongly opposes the suggestion that residential customers should bear a portion of the cost associated with toll fraud in these instances. It would be unfair to allow carriers to pass on in rates any toll fraud incurred by the carrier. This would have the effect of charging customers who bear absolutely no responsibility for the incurrence of those costs. To avoid this possibility, carriers should be required to separately account for the uncollectible expense associated with toll fraud between residential and business customers and among various service categories.

The PaPUC has initiated a proposed rulemaking to require LECs to provide intrastate reporting requirements which would allow for the monitoring of the impact of LECs' billing and collection activities on residential ratepayers. The proposed rules would require Pennsylvania LECs with over 50,000 access lines to provide gross revenue for all residential accounts broken down by basic, nonbasic and toll service, as well as corresponding information related to gross and net write-offs of uncollectible accounts.³

³See, Regulations Regarding Revision of Local Exchange Carrier (LEC) Reporting Requirements (52 Pa. Code §§64.201 and 64.2, Docket No. L-930074 (Order entered January 21, 1993)).

A similar approach could be implemented by the FCC to require the segregation of uncollectible expense between residential and business accounts, and by relevant service categories. This information could be used to assess the impact of interstate toll fraud costs on various carriers, as well as serve as a starting point for identifying uncollectible expense attributed to toll fraud.

2. Manufacturer's Responsibilities

The PaPUC strongly supports the FCC's proposal to amend Part 68 of the Commission's rules to require equipment manufacturers to provide warnings regarding the potential risk of toll fraud associated with use of their equipment. The PaPUC further agrees with the FCC that the warnings be prominent and conspicuous and included in any instruction manual or other literature accompanying the equipment and on the exterior packaging of the equipment. The PaPUC also agrees that the warning should discuss the customer's financial exposure and measures available to limit that exposure. The warnings should also include a toll-free telephone number which the customer can call to obtain more information on toll fraud and the measures that can be taken to prevent it.

The PaPUC believes that it is also important at this time for the Commission to provide further incentives to manufacturers to develop and design their equipment to prevent toll fraud to the maximum extent possible. Manufacturers who choose not to design their equipment to prevent toll fraud to the maximum extent

possible should be required to warn customers of this fact. Thus, in the warning, the manufacturer should be required to inform the customer of the risk associated with its particular product and of the availability or nonavailability of services or products that can be used with the particular communications system to prevent toll fraud. Manufacturers should also be required to inform the customer how to obtain optimum protection on its system from toll fraud. In this regard, the PaPUC agrees with the FCC's proposal that if default codes are set by the manufacturer, vendor, or carrier, those codes must be fully explained in the instructional manual or literature and must explain the risks of using the equipment without modifying these default codes. Manufacturers should further be required to provide their vendors with these warnings and require them to distribute and discuss them with customers before a sale is completed.

Second, the FCC should establish a task force comprised of manufacturers and others whose primary purpose would be to examine and recommend standardized preventive features or measures which should be included in Part 68. For example, in response to the Pacific Mutual petition, Allnet proposed that minimum conditions be set out in Part 68, including inter alia, anti-theft features on all PBXs.⁴ A task force should examine this issue and

⁴See, NPRM at 13. Allnet also proposed such measures as real time on-line printing and monitoring of Call Detail Records ("CDR"), limiting direct inward systems access trunks to 7 digit outpulse, purchasing account codes from IXC's, purchasing 800 call detail from IXC's, and mandatory 24 hour in-house attendant at each PBX control console or an automatic alarm algorithm that would page a PBX attendant who could shut down the PBX from a remote location.

report back to the FCC with appropriate recommendations on standardized anti-theft features for all PBXs in the future.

In summary, manufacturers should have an obligation to warn consumers of the potential risks and financial liabilities of toll fraud associated with their particular communications systems. Manufacturers should be required to make this information available to their vendors for distribution to customers at the time of purchase. The FCC should establish a task force to make recommendations for incorporating standardized anti-theft measures into Part 68.

3. Customer Responsibilities

Once the customer possesses the information necessary to make a reasonably informed decision, it should be his or her responsibility to take the appropriate steps to prevent toll fraud to the maximum extent possible on his or her particular communications system. If the customer does not take the necessary steps, or purchases a "substandard" system at his or her own risk, then the customer should be financially liable for any damage resulting from toll fraud.

C. Payphone Fraud

The PaPUC also supports the FCC's proposal to more equitably apportion fault in cases of payphone fraud. The PaPUC agrees with the FCC's tentative conclusion that payphone providers

While the PaPUC does not specifically endorse all of these proposals at this time, it does believe that a task force should be established to specifically examine "standard" preventive measures that should be incorporated into Part 68.

that take reasonable steps to limit their exposure to toll fraud and are not customers of the underlying IXC should not be required to pay bills generated as a result of toll fraud perpetrated through their equipment.

The FCC seeks further comment on adopting the recently enacted Florida Commission rules on a nationwide basis. Under the Florida rules⁵, pay telephone providers are released from liability for charges resulting from certain types of fraudulent calls if the provider purchases call screening for the line. The Florida Commission's rules also require that the losses from fraud be allocated between the LECs and IXCs based upon fault. The PaPUC supports the adoption of a federal policy modeled after the Florida Commission's rules over the current system. The PaPUC believes the Florida rules would achieve a more equitable apportionment of liability in instances of payphone fraud.

However, the PaPUC believes that any federal policy should also require payphone providers to take such other reasonable measures as are available to prevent payphone fraud. Carriers should not be liable where reasonable measures were available to the payphone provider to prevent the fraud from occurring and the payphone provider failed to take the necessary steps to prevent it. Where, however, the carrier's negligence causes the fraud, the carrier should be liable. In this regard, carriers and manufacturers should be required to warn providers of

⁵See, Florida Administrative Code, rules 25-4.076(12), 25-4.515(17).

the potential risk and liabilities associated with payphone fraud and inform payphone providers of available measures to prevent payphone fraud.

D. Line Information Database Fraud

Line Information Database ("LIDB") is a database created by the LEC which can be accessed by LEC customers such as IXCs to obtain data on the account status of LEC joint use calling cards, as well as information on line numbers, such as third party billing or collect call restrictions. The LIDB is updated by the LEC on a regular basis.

The PaPUC supports the FCC's proposal to adopt a more equitable method of apportioning liability in instances of credit card fraud. The PaPUC agrees that LIDB providers should have incentives to make LIDB as effective as possible. Current practices permitting LECs to shield themselves from responsibility for toll losses provide virtually no incentive to the LEC to ensure that LIDB information is both up-to-date and accurate. When credit card fraud is a direct result of LEC negligence, the LEC should be liable for any resulting damage.

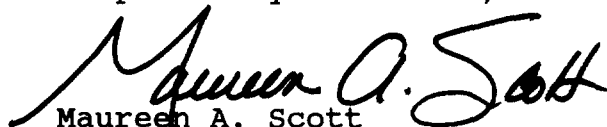
Any policy, however, should also recognize an obligation on the part of the LIDB customer to query the LIDB to determine whether the card is valid or to determine whether third-party or collect call restrictions apply. To the extent the LIDB customer fails to undertake the appropriate queries and credit card fraud occurs as a result, the LIDB customer should be liable for any damage resulting from credit card fraud.

Finally, the PaPUC agrees that IXC's should be required to provide information on the origination and termination points of each call to the LEC, to allow the LEC to identify calls originating from or going to an area associated with fraud problems. As the Commission notes, this information would assist the LEC's in developing a customer calling pattern profile that could be accessed in a case of suspected fraud. Failure on the part of an IXC or LEC to either provide or utilize this information respectively, should be considered in determining liability where credit card fraud occurs as a result. IXC's should have the ability to charge for this information.

III. CONCLUSION

The PaPUC supports the adoption of rules which would more equitably apportion liability in cases of toll fraud.

Respectfully submitted,


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Public Utility Commission

Dated: January 14, 1994.